

**REMARKS**

Applicant respectfully requests reconsideration of this application.

**I. Status of the Claims**

Claims 26, 28, 29, 31-42, 45, 46, and 48-52 are pending. Claims 1-25, 27, 30, 43, 44, and 47 were previously cancelled. The current Office Action indicates that claims 26, 28, 39, 31-38, 40, 41, 45, 46, and 48-42 are allowed. Claims 39 and 42 stand rejected.

**II. Claims 39 and 42 Are Not Anticipated**

The Office maintains the rejection of claim 39 under 35 U.S.C. § 102(b) as allegedly anticipated by Accession No. AD0000020, direct submission, GenBank, December 10, 1996 ("Du"), and the rejection of claim 42 as allegedly anticipated by Accession No. U65786, direct submission, GenBank, 1 August 1996 ("Bourn"). Office Action, p. 3. Regarding claim 39, the Office states that, "Applicant argues that the claimed polynucleotide ends at one end with the sequence of SEQ ID NO:1, and at the other end with the sequence of SEQ ID NO:2, while the cited reference extends beyond those endpoints." *Id.* However, the Office contends that "[t]he language does not restrict the claimed polynucleotide to the construct of Applicant's argument." *Id.* The Office asserts a similar rejection against claim 42.

Applicant respectfully traverses. The length of the claimed nucleotides is limited such that they do not extend beyond the ends of the recited SEQ ID NOs. For example, claim 39 states that the polynucleotide is "delimited upstream" and "delimited downstream" by SEQ *Id.* NOs: 1 and 2, respectively. Figure 4A is instructive. This figure shows the relationship between the SEQ ID NOs recited in claim 39. The claimed

polynucleotide is delimited so that it does not extend upstream of the "t" in the first line of sequence of the figure. Similarly, the claimed polynucleotide does not extend downstream of the "a" in the last line of sequence of the figure. Applicant provides a copy of Figure 4A, in which the upstream "t" and downstream "a" are indicated by arrows. Accordingly, Du does not anticipate this subsequence, and Applicant respectfully requests that the rejection be withdrawn.

Bourn fails to anticipate the polynucleotide of claim 42 for the same reason. The claimed polynucleotide is delimited at its upstream and downstream ends. It does not extend beyond the ends of SEQ ID NOs: 7 and 8. Therefore, Bourn does anticipate the claimed polynucleotide, and Applicant respectfully requests that the Office withdraw the rejection.

### **III. Conclusion**

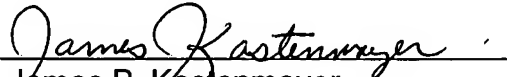
Applicant respectfully asserts that the claims are in condition for allowance. However, should the Office conclude that the rejection should be maintained, Applicant requests that the Examiner contact the undersigned to discuss the rejection.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

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